No. 4

In the Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
APPELLANTS

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Supreme Court of Georgia (R. 249–270) is reported at 215 Ga. 27, 108 S.E. 2d 796. An earlier opinion by that court in this case is reported *sub. nom. Looper, et al.* v. *Georgia Southern & Florida Railway Co., et al.*, at 213 Ga. 279, 99 S.E. 2d 101. The "findings, conclusions, order, judgment and decree" of the trial court (R. 101–107) are not reported.

JURISDICTION

The judgment of Supreme Court of Georgia holding Section 2, Eleventh, of the Railway Labor Act

unconstitutional, was entered on June 5, 195
probable jurisdiction was noted by this Court o
ber 12, 1959 (R. 271, 276). The jurisdiction
Court rests upon 28 U.S.C. 1257(1) and 1257(

QUESTIONS PRESENTED

1. Whether Section 2, Eleventh, of the R
Labor Act, and the union shop agreements w
authorizes, are in violation of the First or
Amendments to the Federal Constitution.

2. Whether the legality and constitutional
union expenditures for political, educationa
ideological purposes are properly presented on t
ord in this Court in appellees' action to enjoin
forcement of union shop agreements made purs
Section 2, Eleventh, of the Railway Labor Act.

3. Whether the operation of union shop agre
made under Section 2, Eleventh, of the Railway
Act should be enjoined in this action because
of the expenditures made by the unions may be
or unconstitutional.

CONSTITUTIONAL PROVISIONS AND STATUTE INVO

1. The pertinent Amendments to the Constitu
the United States provide:

AMENDMENT I.

> Congress shall make no law respect
> establishment of religion, or prohibiting t
> exercise thereof; or abridging the free
> speech, or of the press; or the right
> people peaceably to assemble, and to p
> the Government for a redress of grieva

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Section 2, Eleventh, of the Railway Labor Act, as amended by the Act of January 10, 1951 (64 Stat. 1238), 45 U.S.C. 152, Eleventh, provides in pertinent part:

UNION SECURITY AGREEMENTS; CHECK-OFF

Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the

labor organization representing th
or class: *Provided,* That no such a
shall require such condition of em
with respect to employees to wh
bership is not available upon
terms and conditions as are gene
plicable to any other member or
spect to employees to whom me
was denied or terminated for an
other than the failure of the em
tender the periodic dues, initia
and assessments (not including
penalties) uniformly required as
tion of acquiring or retaining me

(b) to make agreements prov
the deduction by such carrier o
from the wages of its or their emp
a craft or class and payment to
organization representing the cra
of such employees, of any perio
initiation fees, and assessments
cluding fines and penalties) unif
quired as a condition of acquiri
taining membership; *Provided:*
such agreement shall be effec
respect to any individual emplo
he shall have furnished the empl
a written assignment to the labor
tion of such membership dues,
fees, and assessments, which sha
ocable in writing after the expi
one year or upon the terminatio
the applicable collective agreeme
ever occurs sooner.

* * * *

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

STATEMENT

This suit was brought by several employees of the Southern Railway system [1] to enjoin the enforcement of two union shop agreements entered into between that railroad and the unions representing its non-operating employees, pursuant to Section 2, Eleventh, of the Railway Labor Act. The suit sought to have the union shop agreements declared void and Section 2, Eleventh, declared unconstitutional.

1. *Preliminary proceedings.*

This action was filed on June 5, 1953, in the Superior Court of Bibb County, Georgia, less than 60 days after the union shop agreements took effect. Plaintiffs were eight non-union employees of the Southern Railway system (R. 4–5). The unions, which had entered into the union shop agreements and their officers, and the nine individual companies constituting the Southern Railway system, were named as party defendants. The petition asserted that the union shop agreements violated plaintiffs' rights to work and to contract, and therefore deprived them of property without due process of law in violation of the Fifth and Fourteenth Amendments and applicable provisions of Georgia law. No allegations were made concerning the expenditure of union funds for political,

[1] Sometimes referred to as "the railroad."

legislative or ideological purposes, and
of First Amendment rights was asserted
Plaintiffs sought a permanent injunctio
defendants from enforcing the terms of th
agreements, and a declaration that the
were void and unconstitutional (R. 14).
non-union employees intervened as par
(R. 15–17). The petition was then amen
a class action on behalf of others "simila
(R. 18).

Upon petition by the unions, the case
into the federal district court on the gr
involved federal questions and that the am
troversy was in excess of $3,000 (R. 31–3
1953, the railroad and the plaintiffs move
case remanded to the state court, assert
cause of action was not founded upon a cl
arising under the Constitution or laws of
States and that there was no indepe
against the unions which would be remov
upon alone (R. 48, 53–54, 56).

On January 8, 1957, following the dec
Court in *Railway Employes' Dept.* v.
U.S. 225, the federal district court reman
to the state court, with the consent of the
57–8). The unions moved to dismiss, a
moved to amend the petition by alleging
and dues which they would have to pa
union shop agreements "will be used in
part for purposes not germane to collect
ing but to support ideological and politi

and candidates which plaintiffs are not willing to
port", in violation of the First, Fifth, and
Amendments to the federal constitution (R. 59,
No change was made in the prayers for relief.
court treated the motion to dismiss as directed t
petition as amended, and granted the motion
221). Upon appeal, the Supreme Court of Geo
holding that the petition stated a cause of ac
reversed and remanded. *Looper, et al.* v. *Ge*
Southern & Florida Railway Co., et al., 213
279, 99 S.E. 2d 101.

Upon remand, the unions promptly filed thei
swer. Plaintiffs objected to the filing of the an
on the ground that it was untimely, not having
filed at the time of the motion to dismiss. Appare
the trial court announced orally that the objection
well taken, but no written order was entered.

On May 8, 1958, the trial court granted the plai
a broad discovery order which required the unio
produce all their books, records, correspondence
papers "showing or related to monies paid b
members to each of the respective organizatio
affiliates thereof and the purposes for which m
* * * were or are being expended" (R. 65

On August 14, 1958, plaintiffs, the unions an
railroad entered into a stipulation of facts which
designed to constitute the primary evidence on
and to eliminate the necessity of further disc
(R. 153–217).

On September 23, 1958, plaintiffs filed a "Fo
Amendment to Petition" (R. 71–84). This an

ment reduced the number of plaintiffs to
more detailed allegations concerning the
penditure of funds for "ideological" and
purposes, and for the first time reque
prayer for relief, that the Railway Labo
clared unconstitutional "to the extent th
mits union expenditures from dues, fees
ments for "purposes, not germane to co
gaining * * * contrary to the constitut
of petitioners and the class they represe
The amendments also contained a praye
tary damages and for "such other and
lief * * * as may be necessary" to prote
rights.

By a pre-trial order of November 1
court accepted the stipulation, permitte
tiffs to withdraw their objections to the
swer, and allowed the plaintiffs' fourth
to the petition (R. 98–100).

2. *The evidence.*

The evidence in the voluminous record
falls into four distinct categories: (1) th
of facts (R. 165–217); (2) plaintiffs' th
for admissions and the unions' answers
Tr. 1049–75); (3) the depositions of offici
cal organizations with which the unio
ciated (R. 108–152); and (4) various do
periodicals of the unions tending to sho
tivities and expenditures in political an
affairs. The pertinent facts are not in

The union shop agreements provide
that employees of the railroad who are

by unions shall, as a condition to continued em
ment, become members of the union represe
their class or craft within 60 days of the eff
date of the agreement or within 60 days of thei
ployment, and maintain that membership (R.
206). The only requirement for membership
the agreements is tender of the periodic dues, i
tion fees and assessments (not including fines
penalties) which are uniformly required of al
ployees in the same status at the same time and i
same union unit, as a condition of acquiring
taining membership. Membership is not requir
an employee unless it is available to him upo
same terms and conditions which are applicab
all other members (R. 207–208). The agree
establish a system of notice, hearing, and appe
union members in violation (R. 208–213). The
ments, which specify that they shall be constru
separate agreements between each company and
union, were executed in Washington, D.C. in
ruary 1953, to become effective on April 15, 195
214).

The initiation fees required range from $5 t
and the dues from $2 to $6.75 per month[1] (R.
174). There is no indication of periodic assess
required as a condition of continued union me
ship. "A substantial portion" of the proce
such fees and dues are retained by the local lod

[1] The National Marine Engineers and the Internation
ganization of Masters, Mates and Pilots, which represe
few employees of the railroad, have higher dues ($
month, and $25 per quarter) and initiation fees—up t
(R. 172, 174).

the unions, and are used to support legi
in the state legislatures, including leg
than that "involving the negotiation, ma
administration" of collective bargainin
wages and hours, or labor disputes (
176–7).

"A substantial proportion" of the
collected by the local lodges is trans
national organization of appellant unio
R. 177). Many of the unions maintai
funds from the proceeds of such fees a
¶ 32, R. 178). Each of the national
a month per member to the American
Labor and Congress of Industrial Organ
¶ 24, R. 178). The annual amounts o
of each of the appellant unions ranges
$452,214 (R. 318, 322). The AFL–C
penditures of more than $350,000 annu
eration of its Committee on Politi
(COPE), expenditures of up to $139,0
legislative activities, and expenditures o
annually for its Civil Rights Committe
The Committee on Political Educatio
the AFL–CIO made numerous contrib
paigns of political candidates for fe
not from funds derived from gener
the AFL–CIO (R. 277–299, 315, 141–14
CIO also makes contributions of f
$25,000 annually to several labor and
ganizations (R. 320). Several of the
appellant unions are also officers or m
mittees or councils of the AFL–CIO

The Railway Labor Executives' Association co
of the chief executives of the appellant unions a
the operating railway brotherhoods (Stip. ¶ 2
179). "A principal activity" of this Associati
in connection with federal legislation. The As
tion is financed through assessments on its me
unions, ranging from less than $200 to $34,000 ann
which are paid from the general dues funds o
unions (Stip. ¶¶ 26 and 27, R. 179–181).

Railway Labor's Political League (RLPL), a
ganization made up of the officers of appellant u
and several of the operating brotherhoods, was fo
for the purpose of engaging in political activity (
¶¶ 28 and 29, R. 182). The League has an "e
tional" fund and a "free" fund. The educational
is used for administrative expenses, for publicity
miscellaneous activities tending to influence vot
national, state and local elections, and to support
didates for public office at the state and local
except in those states which prohibit such sup
The educational fund of the League sometimes rec
periodic contributions from the general dues
of several member unions, but its principal fina
support is from the Railway Labor Executives'
ciation (Stip. ¶¶ 29 and 30, R. 182–184). The "
fund of the League, from which contribution
made to the campaigns of candidates for na
office, consists of the receipts of individual vo
contributions to that fund from members of app
unions and others. The contributions are collect
officers of the League, who are also officers of so

the appellant unions; and officers of the appellant unions urge their members to contribute to the free fund of the League (Stip. ¶¶ 31–33, R. 184–185). The League has supported the Democratic National Committee and Democratic candidates for President and for the United States Senate, and has supported more Democratic than Republican candidates for Congress (Stip. ¶¶ 34–42, R. 186–187). Appellant International Association of Machinists has a "political organ" called the Machinists Non-Partisan Political League, which operates in a manner similar to that of Railway Labor's Political League (Stip. ¶¶ 58–75, R. 192–197).

Thirteen of fifteen appellant unions are part owners of the society which publishes the weekly newspaper "Labor" (Stip. ¶ 46, R. 189). "Labor" derives its financial support primarily from subscriptions. The appellant unions (with one exception) buy subscriptions "for officers and members" of the unions, and these subscriptions constitute "a substantial portion" of "Labor's" revenues (Stip. ¶¶ 47–48, R. 189). Portions of "Labor" are devoted to legislative and political subjects, and "Labor" tries to influence its readers to support its political philosophy and to contribute to Railway Labor's Political League and COPE (Stip. ¶¶ 47–51, R. 189–190). During elections, "Labor" publishes special editions featuring the candidates it supports, and distributes them to non-subscribing members of appellant unions and to members of the general public as well as to subscribers (Stip. ¶ 52, R. 190–191). Each of the appellant unions also publishes a monthly journal which at-

tempts to influence its readers in the same manner as does "Labor", except the journals apparently do not publish special editions supporting political candidates (Stip. ¶ 50, R. 189–190). These periodicals are published in the regular course of the unions' business, and the costs of publication and distribution are paid for from general dues funds (Stip. ¶ 79, R. 198–199).

The six individual appellees are employed by the railroad in positions covered by the union shop agreements. Three of them have filed supersedeas bonds, and the agreements have been enjoined as to them. The other three have, as a condition of continued employment, been obliged to join the Brotherhood of Railway Clerks,[1] and to pay the regular dues and fees (Stip. ¶¶ 80–85, R. 202–5). The individual appellees fairly represent the position of "the substantial number" of other employees of the railroad who have been compelled to join appellant unions, or whose employment has been terminated, by virtue of the union shop agreement and who object to the use of their money for the disputed purposes (Stip. ¶¶ 5–7, R. 166–7). Appellees object to the use of their dues and fees for the "political activities" described above, and oppose and disagree with the political doctrines and candidates and legislative programs supported by appellant unions, and object to the use of their money for "purposes other than the negotiation, maintenance and administration" of collective bargaining

[1] Apparently, the three who have not joined any union are also members of the class represented by this union, although the record does not indicate what positions they hold (see Appellant's Brief, p. 7).

agreements and disputes relating to them (Stip. ¶ 44, R. 188). The funds expended by appellant unions for political activities and other purposes to which appellees object are "substantial," and constitute a "substantial" proportion of the periodic dues, fees and assessments required of individual appellees under the union shop agreement (Stip. ¶ 43, R. 187-8).

One deficiency in the record for the purposes of adjudication by this Court is that the record does not reveal the number of employees of the railroad who voluntarily joined appellant unions or the number who would be required to join under the terms of the union shop agreement.[4] Nor is there any indication (other than the word "substantial") of the number of employees who object to union membership because of the unions' use of general dues funds for legislative and political purposes, or the crafts or classifications to which they belong, or the states within which they reside or work. There is a similar lack of evidence concerning the proportion of appellants' general dues funds used for legislative and political purposes.[5] Nor is there any evidence concerning the feasibility of segregating the dues and fees of individual appellees, and other dissenters, so that their money would not be used for political and legislative purposes—assuming, of course, that such segregation was necessary or desirable.

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[4] The legislative history of Section 2, Eleventh, of the Act indicates that, at the time of its enactment, approximately 75 to 80% of all the employees of all the railroads in the United States were voluntary union members. See *Railway Employes' Dept.* v. *Hanson*, 351 U.S. 225, 231.

[5] The record indicates only that it is "substantial."

3. *The findings and decree.*

Based primarily upon the stipulation, the trial court found that appellant unions would expend the dues and fees of appellees in substantial amounts (1) in political campaigns, (2) to propagate political and economic doctrines and legislative programs, and (3) to "impose * * * conformity" upon appellees and the general public to the doctrines which appellant unions advocate (Findings 5 and 6, R. 103). The court also found that the use of appellees' fees and dues "is not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest" (Finding 7, R. 103). It also found that the commingling of funds by the unions made it impossible to segregate the amount of dues already collected from the individual appellees (Findings 8, 10, R. 104).* The court then concluded that the "exaction and use" of appellees' money, and the union shop agreements authorizing them, violate the First, Fifth, Ninth, and Tenth Amendments to the Constitution, as well as the law and public policy of Georgia. There was no finding, or contention, that the expenditures for legislative and political purposes violated the Federal Corrupt Practices Act (18 U.S.C. 610), other federal legislation, or state legislation, or that they were improper under the unions' constitutions and by laws. There was also no express finding that the expenditures themselves were not germane to the legitimate purposes of the unions.

*There was no comparable finding about the possibility of segregating the dues to be collected from appellees in the future.

By way of relief, the court enjoined the en
ment of the union shop agreements, declared
tion 2, Eleventh, unconstitutional, declared the
shop agreements null and void, and awarded
damages of $133.50, $151.50, and $158.25 to the
appellees who had not filed supersedeas bond
105–6). The court provided that the unions co
any time seek to dissolve the injunction upon a
ing that "they no longer are engaging in th
proper and unlawful activities described above
106).'

4. *The appellate proceedings.*

The Supreme Court of Georgia affirmed, w
modification of the findings or order of the trial
Probable jurisdiction was noted by this Court
tober 12, 1959, and the cause was briefed an
argument had on behalf of appellants and app
Rehearing was ordered on June 20, 1960 (363
825).

In the same order, the Court certified to the
ney General that the constitutionality of Sect
Eleventh, of the Railway Labor Act is drawn in
tion in this case. Upon a petition of the U
States for intervention, an order was entered
tober 10, 1960, permitting the United States to
vene and become a party, pursuant to 28 U.S.C.

SUMMARY OF ARGUMENT

Unlike the original parties, we do not believ
the Court need should decide in this case the

'A reading of the decree and order does not reveal wh
the unions' activities were considered unlawful.

ity of the various disputed expenditures. We think it appropriate for the Court (a) to reaffirm the general constitutionality of Section 2, Eleventh, of the Railway Labor Act, and of the union shop agreements made pursuant thereto; as well as for the Court (b) to hold that, regardless of the legality of the challenged expenditures, appellees are not entitled to the particular relief sought and obtained below, *i.e.*, an injunction against enforcement and operation of the union shop agreement itself. We submit that appellees have other remedies—either on remand, together with amendment of the complaint and prayer to enjoin use of monies paid by them for the purposes to which they object, or in a new suit—if they desire to test the validity of the expenditures they attack.

I.

A broad spectrum of constitutional questions, some of them quite delicate, have been tendered for decision in this case. The appellees contend that the exaction, under sanction of the Railway Labor Act and the union shop agreements, of fees and dues from them which will be expended by appellant unions in substantial part to promote political and legislative programs, policies, and candidates which appellees oppose, violates their constitutional rights not to have their money used to speak against their own beliefs. Appellant unions contend that they are private organizations and can thus spend their dues for any purpose they see fit, if in accordance with their con-

stitutions and bylaws, and federal and s
At any rate, they argue, all of their exp
germane to collective bargaining.

Numerous union activities and expendi
ferent kinds are thus drawn in question.
from testimony by union officials befo
committees, and solicitation at union me
untary contributions to political organiz
use of union funds for political campaig
endorsement of political candidates by
their periodicals, to "interpretive" and
tive" news articles by such journals; fro
port of legislation concerning wages, hou
ing conditions, to support of legislation
housing, farm programs and foreign ai
legislative activities and expenditures
lodge, to legislative and political activi
penditures by the AFL–CIO.

These different kinds of expenditures
in dispute may well involve differing co
For instance, support of legislation conc
and hours might be considered more "
collective bargaining than support of l
volving farm programs; and the majority
members may have an interest in associa
to publish their views in a newspaper, w
may be entitled to greater protection tha
est in having the union render financia
the campaign of a particular political c

However, since appellees brought this action to validate the union shop agreements and Section Eleventh, of the Railway Labor Act, instead of fining their attack to the disputed activities and penditures, the different kinds of activities and penditures involved have been treated alike by ap lants and appellees and by the courts below, in record and findings, and in the arguments below here. All have been treated alike, without sepa consideration of the varying factors which may involved.

II

Section 2, Eleventh, of the Railway Labor Act, a union shop agreement made thereunder, subs tially like the ones at bar, have been held cons tional and valid by this Court. *Railway Emplo Dept.* v. *Hanson,* 351 U.S. 225. In the present the record shows that a substantial part of the and fees to be collected from appellees will be exper for disputed legislative and political purposes. even if those expenditures were illegal, the statut self would not be invalid. Section 2, Eleventh, not authorize invalid expenditures. Nor does statute require that the dues, collected by a u from members forced to join under the union agreements, be utilized for the alleged wrongful poses in violation of the constitutional rights of members. On the contrary, the statute contain implied prohibition against union expenditures w

would violate the constitutional or other
appellees or other dissenters. The nature
penditures therefore does not affect the co
ality or validity of the statute itself. Whe
any or all of the disputed expenditures are
Section 2, Eleventh, is valid and constituti
union shop agreements are also valid on
and in general, even though particular ex
may be illegal.

III

Since the statute is valid and the agreem
wise valid on its face, appellees are not ent
tain the particular relief which they soug
tained below, *i.e.*, an injunction against e
and operation of the union shop agreement
This remedy unnecessarily infringes upon
mate interests of the majority of the unio
to associate together in a union shop, an
sarily hinders the expressed Congressiona
promoting industrial peace in the railroa
through industrial self-government by th
and through elimination of the incentive
riders" who receive the benefits of the coll
gaining agency without contributing to it
The granting of such an unnecessarily bro
was reversible error.

IV

Appellees have adequate remedies—which
not pursued but could pursue on remand

independent suit—by which to test their clai
the disputed expenditures are illegal. For ex
a proceeding to enjoin appellant unions from r
expenditures for the disputed purposes fro
funds derived from appellees' fees and dues, o
other remedy keyed to a proper appraisal of di
expenditures, would be appropriate and adequ
protect the rights asserted by appellees. In a
to providing a remedy appropriate to the clai
serted, such a proceeding would bring sharpl
focus the differing considerations involved i
kind of disputed expenditure. Possibly ther
also be a remedy under Section 501 of the
Management Reporting and Disclosure Act of

V

In accordance with the long-established an
founded principle of avoiding constitutional qu
when a decision can be based on other ground
Court should avoid the constitutional question
the validity of the various expenditures and
ties and reverse the judgments below becaus
granted a remedy (injunction against enforcem
the agreement itself) which was broader than ne
to protect the rights asserted. The decision o
tendered constitutional questions in this case
be particularly inadvisable at this point beca
record, the findings, and arguments of counse
together many different kinds of activities, a
blur the differing considerations.

ARGUMENT

In their briefs and arguments, both orig
have assumed that the Court will and sh
mine the validity of the various types o
penditures challenged by the appellees
parties also seem to agree that the vali
union shop provision of the Railway La
well as of the union shop agreements th
integrally and necessarily connected with
of these disputed expenditures. We take
view. This is a suit to enjoin enforcem
union shop agreements as such. Our
that—in such a suit and particularly on t
the Court can and should decide that th
provision and the agreements are vali
selves—without regard to the validity o
types of expenditures attacked by the ap
more need be decided at this time. If
disputed expenditures are illegal, ther
edies available to the appellees and those
but the one remedy which is not open, i
is totally to enjoin operation of the union
ments as a whole. Those agreements sh
mitted to operate. At the same time we
the unions do have a responsibility towar
members in taking "political" action, and
record and a proper request for relief, e
mand in the present case or in a new ac
be that certain of the appellants' expen
be found to be illegal as to the appellee
they represent.

I

THE PARTIES HAVE TENDERED THE ISSUE OF THE VALI OF VARIOUS TYPES OF EXPENDITURES MADE BY UNIONS, BUT AT LEAST CERTAIN OF THOSE EXPE TURES INVOLVE DELICATE CONSTITUTIONAL QUEST OF FAR-REACHING CONSEQUENCE AND NEITHER SUIT NOR THIS RECORD IS APPROPRIATE FOR T RESOLUTION

A. The disputed political and legislative expenditures co broad spectrum of activities, and at least some of them delicate constitutional issues.

1. *The broad issues tendered by the parties.*

Appellees, representing the dissenting minoriti each of several crafts or classes of the Southern R way system's employees, contend that the appe unions violate their constitutional rights by exac fees and dues from them under the sanction of ermmentally-authorized union shop agreements, fo purpose of promoting legislative and political grams, political candidates, and policies to which pellees are opposed. They find the requisite "gov mental action" in the enactment of Section 2, E enth, which permits union shop agreements in railroad industry notwithstanding state law to contrary,[8] and in the grant of other powers to unions. They contend that the expenditure of m

[8] *Railway Employes' Dept.* v. *Hanson*, 351 U.S. 225, The decision of the Georgia courts below applies not on states which prohibit union shop agreements but to every in which the Southern Railway system operates (R. 105–6) *Hanson* the Court found federal action in the 17 states Section 2, Eleventh, was necessary to supersede state law.

collected from them for legislative, political and ideological programs to which they object violates their political freedom and their freedom of speech (or, more specifically, their freedom not to have their money used to speak against their own beliefs), and their freedom to be free from ideological conformity. They urge that these freedoms are protected by the Constitution, primarily by the First Amendment. In effect, they concede that none of their constitutional rights would be violated if all of their fees and dues were used for purposes "germane to collective bargaining", but contend that expenditures for political, legislative and ideological purposes are not so "germane". They conclude, as the courts below held, that because their fees and dues have been and will be used "in substantial part" for purposes which are not germane to collective bargaining, they should not have to pay any fees and dues, that enforcement of the union shop agreement should be enjoined, the agreement declared null and void, and Section 2, Eleventh, be declared unconstitutional.

Appellant unions, in contrast, contend that the union shop agreements were valid even without Section 2, Eleventh, and that there is therefore no showing of governmental action. They argue, secondly, that an employee has no constitutionally protected right to work for an employer without having a part of his dues expended for political and legislative purposes with which he disagrees. Thirdly, they contend that, at any rate, all of the political, legislative and educational expenditures shown in the record are primarily

designed to advance the interests of the unions and their members by legislation concerning such matters as retirement and unemployment insurance, safety, sanitation; and that all political activity is intimately related to collective bargaining and its objectives.[9] It has also been suggested that labor unions have traditionally engaged in political and legislative efforts and that history demonstrates that political and legislative activities by unions are essential to efforts by employees to maintain and improve their bargaining position and engage successfully in collective bargaining (Brief for the AFL–CIO as *amicus curiae,* pp. 14–30).

2. *The disputed political and legislative expenditures cover a broad spectrum of activities.*

The union expenditures and activities in dispute may be divided into several categories.

First. At the local or lodge level, dues are used "to support legislative activity" in the state legislatures pertaining both to labor legislation and to general legislation not directly involving collective bargaining or wages and hours (Stip. ¶ 20, R. 176–7).[10] In addition, except in states which have restrictive legislation, the local units of the unions "extend substan-

[9] Appellants raise several procedural questions, claiming violation of due process in the Georgia courts. Since the United States intervened in this case because the constitutionality of Section 2, Eleventh, was drawn in question, we do not discuss the procedural questions.

[10] The record contains little evidence as to the precise nature of this legislative activity. We have been unable to determine whether or not it is restricted to testifying before legislative committees and informing the legislatures of the views of the majority of the members of the local units.

tial financial support to candidates for public offic
at the state and local levels (Stip. ¶ 20, R. 176–7)

Second. In regard to activities by the nation
unions themselves, the area of dispute apparently
volves primarily around the publication of periodic
and their contents. Each of the appellant unions h
a monthly journal which is supported by regular du
and fees, and which publishes, among other thin
endorsements of political candidates, voting records
candidates, appeals to register and vote, appeals
contribute to political and other organizations, e
torials and editorial comment, and "interpretive" a
"non-objective" news articles and stories and c
toons which are designed to influence the read
toward the point of view held by the journal (St
¶¶ 50 and 79, R. 189–90, and 198–9; see, also, reco
references in appellees' brief, pp. 99–100).

Third. Together with several of the unions rep
senting the operating crafts of railroad employees,
pellant unions are part owners of "Labor", a week
newspaper which derives its principal financial su
port from subscriptions (Stip. ¶¶ 46, 47, R. 189).
of the appellant unions (with one exception) purch
subscriptions for their officers and some of their e
ployees from general dues funds (Stip. ¶¶ 49, 52,
189, 190–1). In addition to advocacy of politi
views in its regular editions, which are similar to
journals of individual appellants, "Labor" publis

[11] The record does not clearly indicate whether these activi
are carried on by all of the local units of appellant unions,
merely by some of the local units of some of appellant uni
Compare Stip. ¶ 20 with Stip. ¶ 21, R. 176–7.

special campaign editions featuring one of its favored candidates for office, which it distributes in part to members of the unions who are not subscribers, and to the general public (Stip. ¶ 52, R. 190–1).

Fourth. The executives of appellant unions also attempt to influence federal legislation, as members of the Railway Labor Executives' Association, through "personal contact and persuasion" with Senators and Congressmen (Stip. ¶ 26, R. 179).

Fifth. In addition to their own activities and expenditures at the national level, the appellant unions (or some of them) make contributions out of general dues funds to support organizations such as Railway Labor Executives' Association, Railway Labor's Political League and the Machinists Non-Partisan Political League (Stip. ¶¶ 26, 30, 63, R. 179–80, 183–4, 195). Appellants also support the two political "Leagues" by soliciting and collecting voluntary contributions for them from their members (Stip. ¶¶ 31–33, 65, R. 184–6, 195). The political "Leagues" support candidates for political office by preparing and distributing political literature, transporting voters to the polls and by contributing funds to candidates' campaigns at the State and local level, and, from voluntary contributions, at the national level (Stip. ¶¶ 29, 58, R. 182–3, 192–3).

Sixth. One further category of union activity is in dispute. Each of appellants is a member of the AFL–CIO and pays it a "per capita tax" of 5¢ per month per member (Stip. ¶ 24, R. 178). The AFL–CIO maintains out of general funds a Department of Leg-

islation, consisting in part of five registered lobb
to promote its legislative program, which inc
both matters directly affecting unions and a l
range of issues affecting union members and the
eral public (R. 126–131). In addition, the A
CIO contributes to its Committee on Political
cation (COPE), which is active on both the nat
and state levels. COPE's function is similar to
of the Political Leagues described above except
its activities are more comprehensive (R. 141–1

3. *The general nature of the constitutional i*
involved in these expenditures.

No extensive discussion is necessary to show
the issues raised by the parties are of great co
tutional importance, and, at least in some insta
involve a delicate balancing of legitimate but
flicting interests. On the one side are the inte
of the dissenting minority employees, required
the union shop agreement to join the union at
price of continued employment, not to have
money used to advance candidates and causes w
they abhor, and to be free of undue influence.
interest was explicitly recognized by the Cou
Hanson, 351 U.S. at 235–238. On the other sid
the Congressional policy, also recognized by
Court, that the expenses of the collective bargai
agency, which represents and brings benefits to a
the employees of a given craft or classification, sh
be borne by all, and the interests of the majorit

the employees to associate together to take lawful action they deem appropriate to advance their organizational goals.[12] "The law balances conflicting 'rights' in many fields, but nowhere is there more controversy over the balancing than in the field of labor law," especially where the interest of the dissenting employee in not paying dues for purposes to which he objects may conflict with the desire of the majority for union security.[13]

The delicacy of the questions involved, the intensity of the feelings aroused, and the need for judicial caution in this area are all strikingly illustrated by the English experience of half a century ago. In 1909, the House of Lords ruled, in effect, that all political activity by unions was *ultra vires* and illegal. *Amalgamated Society of Railway Servants* v. *Osborne*, [1910] A.C. 87. The House of Lords' decision was unusual in that it went beyond the grounds urged by the parties in argument.[14] Four years after that decision, Parliament, acting under the leadership of

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[12] The interest of the majority in establishing a union shop is not constitutionally protected. See *Lincoln Federal Labor Union, et al.* v. *Northwestern Iron & Metal Co., et al.*, 335 U.S. 525; *American Federation of Labor* v. *American Sash & Door Co.*, 335 U.S. 538, 542.

[13] See Editor's Note to Rose, *The Right to Work: It Must Be Supreme Over Union Security*, 35 A.B.A.J. 110.

[14] See Rothchild, *Government Regulation of Trade Unions in Great Britain: II*, 38 Col. L. Rev. 1335, 1356–63, which was cited in *United States* v. *C.I.O.*, 335 U.S. 106, 149 (concurring opinion), and in *United States* v. *UAW-CIO*, 352 U.S. 567, 596 (dissenting opinion).

then Home Secretary Winston Churchill, legislation which not only permitted union activity but deprived the courts of jurisdic such matters. Trade Union Act of 1913, 2 & 3 c. 30. The Act protected the dissenting m however, by providing that the dissenting m would, after objecting to the payment of d political purposes, be entitled to a deduction dues, proportionate to the political expenditu

Moreover, the constitutional issues tendere broad consequences, and therefore should be only on a proper record and in a proper proc Neither union security agreements[16] nor p activities by unions holding such agreemer novel. The Railway Labor Act covers ma ployees both in the railroad and airline indu the unions representing railroad employees al said to have 1,500,000 members (Tr. 567, p. 1, Decision of the general constitutional questio dered would affect all such employees; and, if lees are correct[17] that the "governmental activ this case is not restricted to the authorization o shop agreements by the Railway Labor Act n standing state law, the decision here would b cable to the additional millions of employees

[16] There have been later amendments to this statu footnote 32, *infra*.

[16] Such agreements include both the "closed shop" "union shop", as well as the "agency shop".

[17] Appellees' Brief, pp. 51–62.

by union shop agreements under the Labor Manage ment Relations Act, 1947.[18]

B. Because of the nature of the remedy sought by appellees this broad spectrum of political and legislative expenditure and activities has been treated alike by the courts below and by the parties in this Court, although differing consideration may well apply to the various classes of expenditures and activities

Appellees have attacked the activities and expendi tures of the unions in a suit to enjoin the enforcemen of the union shop agreements, rather than in an actio to enjoin the expediture of monies collected from ap pellees for the disputed purposes. It is apparentl appellees' theory, and that of the courts below, that i *any* expenditure is made from appellees' fees and due for purposes which infringe constitutional rights, the the entire union shop agreement is illegal and Sectio 2, Eleventh, is unconstitutional. The stipulation o facts was apparently drafted in accordance with thi theory, and the record, as well as the findings of fac and conclusions of law, are consistent with it. Appel lants, apparently without taking specific exception t appellees' premise, have contended that none of th

[18] The Department of Labor estimates that 74 percent, o 5.5 million, of the 7.5 million employees under collective bar gaining agreements which cover 1,000 or more workers wer working under union shop agreements. *Union Security an Checkoff Provisions in Major Union Contracts, 1958–59*, Dep of Labor Bulletin No. 1272, p. 1, reprinted from the Monthl Labor Review, December 1959, and January 1960. The agree ments studied were estimated to cover almost one-half of th employees working under collective bargaining agreements out side of the railroad and airline industries. *Id.*, p. iii.

disputed expenditures violate appellees' co
rights.

Probably because of the remedy sough
theory of appellees' suit, all of the varie
political and legislative expenditures
lumped together, both by the courts below
parties in this case. Each side has taken
nothing" stand. As a result, both in the lo
and in briefs and argument in this Court, a
by officials of appellant unions to testify be
lative committees are bulked together with
to political campaigns; support of legislatio
ing wages and hours, with support of a
kind of farm legislation; expenditures by
themselves with expenditures by the AFL-
advocacy of ideas and candidates by a
supported by subscriptions with such ad
journals supported directly out of general d

However, the various kinds of union acti
expenditures, which have been united togeth
case, involve many differing considerations,
ably should not be treated in one basket for
or constitutional purposes. For instance,
to proposed legislation, such as a wages and h
a statute outlawing union shop agreements,
rectly affects the strength and bargaining
the union is clearly "germane" to collectiv
ing, whereas it might be more difficult to e
relevance of endorsing or opposing propos
tion concerning foreign aid or farm progr
De Mille v. *American Federation of Radio*
Cal. 2d 139, 187 P. 2d 769, certiorari denied

876. Since an individual frequently does not ap
of all the views of a periodical he buys, a union
port of a newspaper by buying subscri
("Labor") may involve different considerations
support of a periodical (the journals of each
pellants) directly out of general dues funds
United States v. *Rumely*, 345 U.S. 41. In the a
newspaper publication the freedom of the dis
not to have his money used to advocate idea
principles to which he is opposed may conflic
the freedom of the majority to act together to
their views known,[19] but such a conflict may be
difficult to find in the use of general dues fun
the campaigns of specific political candidates.
the publication of a regular periodical desig
reach members of the union may be subject to
ent treatment than efforts to reach and influen
general public. *United States* v. *UAW-CIO*
U.S. 567; *United States* v. *C.I.O.*, 335 U.S
Similarly, the testimony by officials of the unio
fore a Congressional committee and the solicitat
support for a political organization at a union
ing (which appellees need not attend) might be
constitutional treatment different from political
ities which involve the expenditure of m

[19] See *United States* v. *C.I.O.*, 335 U.S. 106. The
legislation, which protects dissenting members from
uting to funds used for political purposes, was not inte
apply to political newspapers. 335 U.S. 106, 150; Rot
Government Regulation of Trade Unions in Great Brit
38 Col. L. Rev. 1335, 1364.

[20] The English legislation does not affect political a
of unions which do not involve the expenditure of
Rothschild, *op. cit.*, 38 Col. L. Rev. at 1364. The Feder
rupt Practices Act makes the same distinction. 18 U.S

Finally, while a substantial portion of
lants' dues are used for political pu
¶ 19, R. 176), the per capita tax to
is 5¢ a month, so that there is raised t
the impact on the constitutional issue c
cumulation of great numbers of individ
taxes as well as the principle against co
port of political views one rejects—as a
that the interest of any individual di
AFL–CIO's political expenditures mig
ered to be *de minimis*.[21]

In sum, it seems to us that the qu
legality of these various union expendit
turn on differing and perhaps conflicti
tions, none of which has been adequatel
differentiated in the record or by the p
case. Possible differences have been o
ignored in the courts below and by a
appellees in this Court. This failure to
differences suggests that the present c
appropriate vehicle for this Court to de
ity of these various expenditures or a
lenged by appellees. But as we show
and III, *infra*, pp. 35–43, there is no
to the Court's deciding that the statut
attacked by appellees is valid, and tha
ment and operation of the union sho
made pursuant to that statute should no
In Point IV, *infra*, pp. 43–49, we show
can and should pursue further remedi

[21] For the situation in England, see Rothsch
Col. L. Rev. at 1365.

test that question. And in Point V, *infr* 53, we return to the problem of the c Court should follow with respect to the di penditures, and urge that the issues inv validity of those payments should not be d in this case at this time.

II

SECTION 2, ELEVENTH, OF THE RAILWAY LA CONSTITUTIONAL, WHETHER OR NOT THE EXPENDITURES ARE CONSTITUTIONAL

Regardless of the legality of the chall penditures and activities, Section 2, Eleve Railway Labor Act is constitutional, and ments made under it are valid on their f

A. This Court has sustained the constitutionality 2, Eleventh, and the general validity of union ments made pursuant thereto

Prior to 1951, the Railway Labor Act for shop agreements between the railroads a representing their employees. Section 2, F Fifth (48 Stat. 1186), 45 U.S.C. 152, F Fifth. This provision was designed to p employees and independent unions against unions. By 1950, however, company unions tically disappeared, and between 75 and 8 railroad employees belonged to independe Under the Act, the unions were and are r represent in good faith all of the employ class or craft which they represent, inclu union members. The non-union members received the benefits of the collective agency without bearing any share of its

correct this situation, Congress
Eleventh, which permits (but doe
unions and the railroads to ente
agreements (64 Stat. 1238), 45 U.
H. Rep. No. 2811, 81st Cong., 2d
Rep. No. 2262, 81st Cong., 2d S
union shop agreements were mad
standing state law to the contrary,
way Labor Act requires carrier-wi
bargaining units which cross state
the railroads are necessarily cons
state commerce. H. Rep. No. 28
Sess., p. 5; 96 Cong. Rec. 16372.

Section 2, Eleventh, and the agre
under were promptly challenged i
several jurisdictions by employees
to join unions.[22] This Court, notin
of the legislation was a policy matt
the realm of Congressional choice,
sion, generally, as a proper exerci
the Commerce Clause, and not in vi
or Fifth Amendments. *Railway*
Hanson, 351 U.S. 225. The questi

[22] Attempts to amend the bill so as t
prevail were defeated by wide margins in
Rec. 16376, 17061.

[23] *Allen* v. *Southern Ry. Co.*, 249 N.C.
petition for rehearing pending; *Hudso*
Line R., 242 N.C. 650, 89 S.E. 2d 441; *A*
tional Association of Machinists, 156 T
412, certiorari denied, 353 U.S. 918; *M*
O. R., 198 Va. 273, 93 S.E. 2d 140.

s passed Section 2,
loes not require) the
nter into union shop
U.S.C. 152, Eleventh,
2d Sess., pp. 3–6; S.
Sess., pp. 2–3. The
ade effective notwith-
ry," because the Rail-
-wide bargaining (*i.e.*,
te lines), and because
onsidered as in inter-
2811, 81st Cong., 2d

greements made there-
d in suits brought in
ees who did not wish
oting that the wisdom
natter properly within
ice, upheld the provi-
ercise of power under
violation of the First
y Employes' Dept. v.
estions of the imposi-

s to permit state law to
s in each house. 96 Cong.

I.C. 491, 107 S.E. 2d 125,
udson v. *Atlantic Coast*
1; *Sandsberry* v. *Interna-*
3 Tex. 340, 295 S.W. 2d
Moore v. *Chesapeake &*

tion of assessments for purposes not g
lective bargaining or of conditions othe
of dues, fees and periodic assessments,
of such payments "as a cover for forc
conformity or other action in contra
First Amendment", were thought not p
record in *Hanson*, and were expressly
U.S. 225, 235, 238.

The union shop agreements in this ca
tially identical to that in *Hanson*. The
present case, however, differs from th
primarily in more explicitly showing th
and fees, some of which are collected u
of the union shop agreement, are used
part for legislative and political pur
advance the doctrines and ideas of th
their officers.

*B. The unlawful expenditure of funds collecte
shop agreement would not invalidate Section
necessarily invalidate the agreement*

The primary contention made by appe
accepted by the courts below, is that,
substantial part of the fees and dues
appellees for the disputed objectives, t
depriving appellees of their constitution
offensive feature of the unions' activity
be the expenditure of the fees and du
their collection. They object to being
port political candidates and measure
to reject. Thus, if appellees' fees and
exclusively for the negotiation, mainte
ministration of collective bargaining a

pellees would have no objection,"[24] and at any rate the whole case would be plainly governed by *Hanson*.

But with respect to the validity of the statute the important point is that Section 2, Eleventh, merely permits the making of union shop agreements and does not itself purport to draw the line between lawful and unlawful expenditures of union funds. Clearly, the Act does not purport to, and does not authorize or sanction, "political" expenditures which would be in violation of appellees' constitutional rights, or which would be otherwise unlawful. There is nothing in the provision which sanctions an expenditure or activity which would otherwise be unconstitutional, nor is there anything in it authorizing expenditures contrary to the Constitution, the Corrupt Practices Act, or state or Federal legislation. On this subject of "political" expenditures, the statute itself stands as if it explicitly provided that the union may make only such "political" expenditures as it may properly do under the Constitution and laws. It contains an implied prohibition against the use by the unions of dissenters' monies in any manner which would violate their constitutional or other rights. Hence, it cannot be challenged as invalid or unconstitutional, regardless of the invalidity of the expenditures disputed in this case.

In the hearings and debates leading to the passage of Section 2, Eleventh, there was brief mention of the

[24] The trial court found that appellee plaintiffs objected to the "collection and use" of fees and dues for "purposes other than the negotiation, maintenance and administration" of collective bargaining agreements and disputes arising under them (Finding 1, R. 101). Similarly, see Stip. ¶ 7, R. 166-7.

possibility of the use of fees and dues collected by virtue of union shop agreements for political or general purposes.[25] This meager legislative history falls far short of revealing a congressional intention to authorize expenditures of any kind, much less to authorize expenditures which may impinge upon someone's constitutional rights. At most, it is evidence only of a Congressional intent to leave the regulation of particular union expenditures to the Constitution, the Corrupt Practices Act (18 U.S.C. 610), other legislation, and to judicial decision.

If, as appellees contend and the courts below believed, the disputed expenditures violated appellees' constitutional rights, Section 2, Eleventh, itself would not be unconstitutional, because as we have noted it does not expressly, or by implication, require or authorize such expenditures.[26] For this reason, the holding of the court below that the Act itself is unconstitutional is plainly wrong and should be reversed. The courts below also committed error when they sweepingly declared on this record the union shop agreements to be "null, void, and of no effect as between the parties" (R. 106). *Hanson* held that these agreements are not null and void, but are valid in general and on their face. The illegality of the par-

[25] Hearings on S. 3295, 81st Cong., 2d Sess., Senate Subcommittee on Labor and Public Welfare, pp. 173–4, 316–7; 96 Cong. Rec. 17049–50.

[26] If there were any doubt as to whether or not the Act authorized expenditures which were in fact unconstitutional, that doubt should of course be construed to avoid the constitutional problem, *i.e.*, not to authorize such expenditures. See, *e.g.*, *United States* v. *C.I.O.*, 335 U.S. 106; *Crowell v. Benson*, 285 U.S. 22, 62.

ticular expenditures would not invalidate the wh
agreement.

III

APPELLEES CANNOT AND SHOULD NOT OBTAIN AN JUNCTION AGAINST ENFORCEMENT OF THE UNI SHOP AGREEMENTS, WHETHER OR NOT THE DISPU EXPENDITURES ARE CONSTITUTIONAL.

As suggested above, the burden of appellees' co plaint goes to the expenditure of funds, collected part from them, for legislative and political p poses which they claim are not related or germa to collective bargaining. They do not, and after decision of this Court in *Hanson, supra,* could n contest the constitutionality of expenditures for p poses which are related to collective bargaining. I under the holdings of the courts below, if *any* s stantial part of the fees and dues paid by appelle is expended for improper purposes, then the un shop agreement is totally null and void and appell are excused from payment of *all* fees and dues. is difficult to understand why the improper expen ture of part of general dues funds should invalid the entire agreement, excuse appellees from pay any part of the fees, dues and assessments called by the agreement, and lead to non-enforcement the agreement as a whole.

We have shown in Point II, *supra,* pp. 35–40, t the statute and the agreements are themselves va To permit the improper expenditure of certain fu by appellants to lead to invalidation of the wh

structure of union shop collective bargaining would be to place the rights of the individual appellees—unnecessarily and without adequate reason on this record—above the interests of the majority of the members of the appellant unions. For those majorities desire the union shop agreements and the form of bargaining such agreements embody. The sweeping relief granted below deprives them, without just cause, of the opportunity to carry their wishes into effect.

It is true that appellant unions have been granted powers by the government and are therefore under corresponding obligations. *Steele* v. *Louisville & N.R.*, 323 U.S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U.S. 210; *Brotherhood of R.R. Trainmen* v. *Howard*, 343 U.S. 768; *Conley* v. *Gibson*, 355 U.S. 41; see also *Syres* v. *Oil Workers International Union, Local No. 23*, 350 U.S. 892; *Cunningham* v. *Erie Railroad*, 266 F. 2d 411 (C.A. 2). But, at least insofar as their voluntary members (those whose membership is not solely a result of the sanction of the union shop agreements) are concerned, the unions are private associations. Their members have rights to associate with each other and, by majority vote, to take action through their elected officials for their mutual benefit as determined under their constitutions and by-laws. Such rights are secured by Title I of the Labor-Management Reporting and Disclosure Act of 1959. The Railway Labor Act itself contemplates such a system of industrial self-government. "This scheme contemplates group action through represent-

atives selected by a majority of the group."[27] H. R
No. 2811, 81st Cong., 2d Sess., p. 4; see *Pennsylv*
R. Co. v. *Rychlik*, 352 U.S. 480, 498 (concurring o
ion). The unions also have a legitimate interes
advocating certain principles and legislative
grams, and to an extent that interest is protected
the Constitution. *United States* v. *C.I.O.*, 335
106; see also *United States* v. *UAW-CIO*, 352
567, 593–598 (dissenting opinion); *Bowie* v. *Secre*
of the Commonwealth, 320 Mass. 230, 69 N.E. 2d
Correlatively, when they reach the political sphere,
unions have a responsibility to minority members,
those minority interests are likewise protected to
extent by the Constitution.

The drastic remedy granted by the courts below
nores both these interests of the majority member
appellant unions and the policy of the Congress
pressed in a statute which has been declared v
and constitutional by this Court in *Hanson*. The
cree gives the unions only the choice of abandon
the union shop agreements, which were authorized
Congress in order to promote industrial peace am
the Nation's railroads and to prevent free riding
non-union members, or of refraining from all le
lative and political activities and withholding fi
cial support from any organizations which engag

[27] Congress has recently enacted comprehensive legislation
signed to insure that the self government of unions, inclu
those in the railroad industry, is democratic and that the u
do in fact respond to the wishes of a majority of its mem
Labor-Management Reporting and Disclosure Act of
(P.L. 86-257, 73 Stat. 519). This Act provides for re
and fair elections, freedom of speech and assembly within
union and increases in dues and fees and levying of assessm
only by majority vote of members (Sec. 101 and Secs. 401
29 U.S.C. (1958 ed., Supp. I) 411 and 481–483).

political or legislative activities. In effect, the decree prevents the majority of the members of the unions from enjoying the benefits of the union shop agreements, which are clearly valid at the very least insofar as they pertain to expenditures directly related to collective bargaining (*Railway Employes' Dept.* v. *Hanson, supra*), because they are also engaging in legislative and political activities which may be invalid. As we spell out in Point IV, *infra*, pp. 43–49, the courts can provide full protection to the asserted constitutional rights of appellees without interfering or infringing upon the legitimate interests of the majority of the members of appellant unions. The broad relief granted unnecessarily destroys the freedom of the majority to act.

IV

REMEDIES ARE AVAILABLE TO PROTECT THE RIGHTS WHICH APPELLEES HAVE ASSERTED

A. Injunction against the expenditure for the disputed purposes of funds derived from appellees' fees and dues

Normally, when the member of an organization challenges expenditures to be made by the organization, suit is brought to enjoin the assertedly improper expenditure.[28] In the situation at bar, the impropriety alleged is based not upon violation of the unions'

[28] The English decision limiting the use of union funds was made in such a case. *Amalgamated Society of Railway Servants* v. *Osborne* [1910] A.C. 87. Although it did not specify the precise remedy, the Wisconsin Supreme Court indicated that it would prevent abuse of the integrated bar system by limiting the activities and expenditures of the integrated bar, rather than declaring it invalid. *Lathrop* v. *Donohue*, 10 Wis. 2d 230, 102 N.W. 2d 404, pending on appeal, No. 200, October Term, 1960. See, also, Note, 32 Tulane L. Rev. 508, 511–12.

constitutions or by-laws or of any state or
statute, but upon the fact that the funds of dis
who are members solely because of the unio
agreements, are being used for the disputed pu
A proceeding, either on remand or in a new
to enjoin the use of expenditures of the fu
rived from appellees for the disputed purpose
therefore adequately protect appellees' rig

That adequate relief to protect the rights
dissenting minority is available by such a reme
be illustrated by reference to proposed legi
In 1958, Senator Potter of Michigan propo
amendment to a pending labor bill which wou
allowed each person who was required to be
member of a union by virtue of a union shop
ment (entered into either under the Labor M
ment Relations Act, 1947 or under Section 2
enth, of the Railway Labor Act) to notify the
tary of Labor that he wished the proceeds of
and dues to be "expended exclusively for co
bargaining purposes or purposes related th
Upon such notification, the unions would be
to expend the proceeds of his dues and fees
sively for such purposes, on penalty of pre
sanctions. 104 Cong. Rec. 11330. The Sen
not accept the proposed amendment."[39]

The interests which Senator Potter p
to recognize by statute are virtually the same

[39] It was defeated by a vote of 51 to 30. 104 Co
11347. Much of the opposition, however, was to t
and provisions of the particular amendment, rather
its general objective. See remarks of Sen. Reverco
Cong. Rec. 11343; and Sen. Cooper, 104 Cong. Rec. 1

which appellees assert are protected by the Constit
tion.[20] It would be anomalous as well as unnecessa
for the courts to provide a more sweeping remedy (*i.*
invalidity of the union shop agreements) for the e
forcement of those rights than to enjoin the expend
ture of appellees' fees and dues for the disput
purposes.

Adequate relief in such an action by dissentin
members could be achieved, for example, by segr
gating all of the receipts derived from those membe
who indicate their dissent into a special fund, whic
would be used only for purposes to which those mem
bers have no right to object. The grant of such r
lief, which would be substantially that provided by th
Potter amendment, would not be inconsistent, in ou
view, with the provision in section 2, Eleventh, whic
allows an employee to be discharged for failure t
der the dues, fees, and assessments "uniformly re
quired" as a condition of membership. 45 U.S.C 15
Eleventh (a).[21] On the other hand, depending on ei

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[20] Compare Sen. Potter's remarks, 104 Cong. Rec. 11214–
with appellees' summary of argument, Appellees' Brief, p
16–17.

[21] The trial court found that by "commingling of funds
appellant unions have made it impossible to segregate th
amount of dues *collected* from [appellees]." (Emphas
added.) Finding 10, R. 104. Whatever the evidentiary bas
for that finding, the court made no finding concerning th
possibility of segregating the fees and dues which would
collected in the future. We have found nothing in the reco
to indicate that appellees' fees and dues could not, in the f
ture, be segregated into a fund which would be used exclu
sively for the purposes to which appellees have no legal rig
to object; and we know of nothing which would prevent suc
a segregation.

circumstances it may be appropriate to re
gations of the dissenting members in pro
percentage of the union's total expenditu
used for the forbidden purposes.[32] Su
need not be resolved at this time, howev
pellees or granted by the courts below.

In addition to providing a remedy li
interests it purported to protect, a pray
the expenditure of the receipts from a
and dues for the disputed purposes w
least three other advantages. First, it
nate the necessity of joining the emplo
which has no legitimate interest in the
which the unions spend their money, a
the actions. See *Conley* v. *Gibson*, 355 U
ond, a showing that the dissenting mem
quested the appropriate officials not to us
from their fees and dues for the dispu
would normally be a condition precede
prayer,[33] (thereby avoiding unnecessary

[32] Great Britain has reached this result by
Union Act of 1913, 2 & 3 Geo. V, c. 30. Under
the dissenting union member can "contract ou
of the cost of the union's political activities.
op. cit., 38 Col. L. Rev. at 1363. The Trade
Trade Unions Act of 1927, 17 & 18 Geo. V, c.
fied that scheme, was repealed in 1946, 9 & 10

[33] See Sec. 501(b) of the Labor-Management
Disclosure Act of 1959, 29 U.S.C. (1958 ed., Su
At least a showing that such a request would
seem to be required.

[34] No specific showing was made in this ca
found, however, that appellant unions "[u]nless
will continue the complained of acts". Finding

or the court might condition its grant of relie
the making of such a request. Thirdly, such a
would have the virtue of bringing each kind
puted activity and expenditure sharply into
since, in order to restrain a particular kind of a
or expenditure, the dissenting members would h
show that the particular kind of activity or ex
ture infringed upon their rights. As we have a
noted (*supra*, pp. 25–28, 31–34), such precision
now present in the case at bar, since the actio
brought to restrain the enforcement of the unio
agreements, not to enjoin the particular kin
expenditures and activities in dispute.

Although we have not found any decision o
Court which deals with the appropriate reme
protect rights such as those which are asserted
there has been a strong suggestion from memb
the Court that a proceeding to enjoin the disput
penditures would adequately protect those inte

> If merely "minority or dissenter prote
> were intended, it would be sufficient for
> ing this to permit the dissenting memb
> carry the burden of making known their
> tion and to relieve them of any duty t
> dues or portions of them to be applied
> forbidden uses without jeopardy to their
> as members. This would be clearly suff
> it would seem, to protect dissenting me
> against use of funds contributed by the
> purposes they disapproved * * *. [U

States v. *C.I.O.*, 335 U.S. 106, 1
opinion of Rutledge, J., with
Black, Douglas and Murphy jo
See, also, *United States* v. *UAW-CIO*
597 (dissenting opinion).

B. Other possible remedies

The Labor-Management Reporting
Act of 1959 is a major step by Congr
democratic procedures within unions, in
officials responsible to the union membe
ing and preserving the rights of the di
ber to vote, to speak, and to sue, and
such members against improper disci
Sec. 101 of the Act, 29 U.S.C. (1958 ed.
In addition, the Act imposes fiduciary
upon the officers of the unions, and
duty of each [union officer or agent],
count the special problems and functi
organization, to hold its money and
for the benefit of the organization an
and to manage, invest, and expend th
cordance with its constitution and by
resolutions of the governing bodies
under." Sec. 501(a), 29 U.S.C. (1958
501(a). For violations of this duty,
scribed a federal remedy, available in
federal courts, similar to a stockhold
action. After attempting to have the
offending officer, the member may hi
action for damages or an accounting o
priate relief "for the benefit of the l

tion." Sec. 501(b), 29 U.S.C. (1958 ed., 501(b).

Those who supported the Act in Congress agreed that Section 501 was not intended restrictions upon the duly authorized expen union funds for political or other purposes.[34] other hand, critics of the bill expressed fears bill would be construed to prevent expendi political and educational purposes.[35] The meaning and application of Section 501 course, evolve in the course of future litigat

We do not take any position at this tir whether this recently enacted Section 501 is a here. However, we call it to the attentio Court as possibly affording a remedy to d workers like appellees.

V

THE COURT SHOULD NOT DECIDE IN THIS CASE T STITUTIONALITY OR LEGALITY OF THE EXPENDITURES AND ACTIVITIES

We end as we began (Point I, *supra,* pp. In our view, the Court need not and should n mine the constitutionality or legality of the expenditures and activities which appellees c Although it would frequently be convenient parties and the public to have a prompt deci cerning the constitutionality of a statute o

[34] See H. Rep. No. 741, 86th Cong., 1st Sess.; r Senator Kennedy, 105 Cong. Rec. 17900; colloquy an Kennedy, Ervin, and McClellan, 105 Cong. Rec. 652

[35] See remarks of Senator Morse, 105 Cong. Rec and Congressman Shelley, 105 Cong. Rec. 18139–40.

taken under color of law, the "gre
cacy" of the judicial function in
stitutional questions led this Cour
own governance, in the cases co
jurisdiction, a series of rules u
avoided passing upon a large par
tional questions pressed upon it
wander v. *Tennessee Valley Auth*
345, 346 (concurring opinion of
of the foremost of these principle
well founded one that the Court w
question of constitutional law in a
sity of deciding it," *Liverpool, N*
Emigration Commissioners, 113 U
not "decide questions of a constitu
absolutely necessary to the deci
Burton v. *United States,* 196 U.S
Randolph, 20 Fed. Cases 242, 254
Va., per Marshall, C.J.).

This principle, which has its r
earliest decisions of the Court,[37] i
respect for the legislature. *E*
supra. It has also been invoked "
grave constitutional questions" v
are tendered "not so shaped by
the proceedings below" as to bri
Court "as leanly and as sharply a
upon an exercise of congression
United States v. *C.I.O.,* 335 U.S. 1
opinion).

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[37] *Calder* v. *Bull,* 3 Dall. 386, 395, 3
v. *Woodward,* 4 Wheat. 518, 625.

great gravity and deli-
in passing upon con-
urt to develop, "for its
confessedly within its
under which it has
art of all the constitu-
t for decision." *Ash-
uthority,* 297 U.S. 288,
of Brandeis, J.). One
oles is the familiar and
t will not "anticipate a
n advance of the neces-
N.Y. & P.S.S. Co. v.
3 U.S. 33, 39; and will
titutional nature unless
decision of the case",
J.S. 283, 295; *Ex parte*
254, No. 11,558 (C.C.D.

s roots in some of the
" is based upon a just
Ex parte Randolph,
d "to avoid passing on
" where the questions
by the record and by
bring them before the
y as judicial judgment
ional power requires"
S. 106, 126 (concurring

, 399; *Dartmouth Colleg*

This salutary principle of avoidin
questions which are not necessary to a
familiar, and has been applied too fr
quire any extensive citation of cases. S
v. *McElroy,* 360 U.S. 474, 492–493; *Sc
Abington Township* v. *Schempp,* No.
decided Oct. 24, 1960. We need only
the Court has in recent years twice av
tional questions concerning First Am
doms similar in many respects to tho
United States v. *UAW–CIO,* 352 U.S
States v. *C.I.O.,* 335 U.S. 106.

There is special reason for invoking
the present case as it now stands. As
cated above (*supra,* pp. 23–34), the c
spectrum of constitutional problems.
low and the parties in this Court have
to distinguish and differentiate among t
of union activities and expenditures in
lants have argued that all of their a
penditures are proper, while appellees
all expenditures not directly related
ation, maintenance and administratio
bargaining agreements violate their
rights. The various activities and e
dispute have been lumped together, bot
and in the contentions of the parties.
ceeding to enjoin the use of the funds
appellees' fees and dues for each kin
expenditure (or comparable litigation)
mand or in a new action—would the
ground and the legal considerations c

class emerge clearly. And only in such a proceeding, we submit, should this Court undertake the decision of the constitutional questions tendered in this case.

Moreover, the protection of the rights of dissenting and minority members of unions of employees in crafts and classifications represented by unions has been the subject of a great deal of legislative activity in recent years. The Labor-Management Relations Act, 1947 outlawed closed shop contracts (Secs. 8(a)(3) and 8(b)(1) and (2) (29 U.S.C. 158(a)(3), (b)(1) and (2)) and permits state legislation to be controlling even with regard to union shop agreements. Section 14(b), 29 U.S.C. 164(b). State laws forbidding union shop agreements (called "right to work" laws) have been passed in 19 states.[38] In 1957 and 1958 such proposals were before the voters in 7 states.[39] And as already pointed out, *supra* (pp. 48–49), the Labor-Management Reporting and Disclosure Act of 1959 enacted federal legislation relating to the use of union funds and assets. Congress has been investigating this area[40] and it is not known what legislation, if any, will result. In any event, it is posible that further clarification of the problems inherent in expenditures of the type challenged by

[38] *Union Security and Checkoff Provisions in Major Union Contracts, 1958–1959*, Dept. of Labor Bulletin, No. 1272, p. 1, reprinted from the Monthly Labor Review, December 1959, and January 1960.

[39] Two states, Indiana and Kansas, adopted the proposals and five rejected them. *Ibid.*

[40] The Senate Select Committee on Improper Activities in the Labor or Management Field (the McClellan committee), whose investigations culminated in the Labor-Management Reporting and Disclosure Act of 1959, recommended that political expenditures by unions be thoroughly investigated. S. Rep. No. 1139, pt. 1, 86th Cong., 2d Sess., p. 137.

appellees may be obtained from the political branches of the Government or from the lower courts.

CONCLUSION

For the foregoing reasons, we do not believe that the Court should reach or consider the constitutional issues tendered by the original parties as to the various challenged expenditures. Rather, we believe that the Court should simply reverse the grant by the courts below of an injunction against the operation of the union shop agreements, and should also reverse the rulings that the statute is unconstitutional and the agreements null and void. The case should then be remanded to the court below for further consistent proceedings. On that remand, or in a new action, appellees can if they desire pursue their remedies against the disputed expenditures. In such a proceeding, a proper record can be established and separate consideration given to the various classes of expenditures which appellees attack. Appraisal of the dissenters' claims will require recognition both of the responsibility of the union, when acting within the political sphere, toward the minority members, and also of the interests of the majority members in the proper functioning of the union as the collective bargaining agency.

Respectfully submitted.

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